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10 Attorneys for Defendants  
11 Herbalife Ltd., Michael O. Johnson,  
12 Desmond Walsh, and John DeSimone

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DIVISION  
16

17 IN RE HERBALIFE, LTD.  
18 SECURITIES LITIGATION

Case No. 2:14-CV-02850-DSF (JCGx)

19 **DECLARATION OF DANIEL S.**  
20 **FLOYD IN SUPPORT OF**  
21 **DEFENDANTS' MOTION TO**  
22 **DISMISS PLAINTIFFS' AMENDED**  
23 **COMPLAINT**  
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1 I, Daniel S. Floyd, declare:

2 1. I am an attorney duly admitted to practice before the United States  
3 District Court for the Central District of California. I am a partner in the law firm of  
4 Gibson, Dunn & Crutcher LLP, counsel for Defendants Herbalife Ltd. (“Herbalife”),  
5 Michael O. Johnson, Desmond Walsh, and John DeSimone (collectively,  
6 “Defendants”) in this action. I submit this declaration in support of the Motion to  
7 Dismiss filed by Defendants. I make this declaration based on my own personal  
8 knowledge and, if called as a witness, I could and would competently testify to the  
9 facts set forth below.

10 2. Attached as Exhibit 1 is a true and correct copy of relevant excerpts of  
11 Herbalife’s Form 10-K for the period ending December 31, 2009, filed with the U.S.  
12 Securities and Exchange Commission (“SEC”) on February 23, 2010, and *available at*  
13 <http://www.sec.gov> and <http://ir.herbalife.com/>.

14 3. Attached as Exhibit 2 is a true and correct copy of relevant excerpts of  
15 Herbalife’s Form 10-K for the period ending December 31, 2010, filed with the SEC  
16 on February 22, 2011, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

17 4. Attached as Exhibit 3 is a true and correct copy of relevant excerpts of  
18 Herbalife’s Form 10-K for the period ending December 31, 2011, filed with the SEC  
19 on February 21, 2012, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

20 5. Attached as Exhibit 4 is a true and correct copy of relevant excerpts of  
21 Herbalife’s Form 10-K for the period ending December 31, 2012, filed with the SEC  
22 on February 19, 2013, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

23 6. Attached as Exhibit 5 is a true and correct copy of relevant excerpts of  
24 Herbalife’s Form 10-K for the period ending December 31, 2013, filed with the SEC  
25 on February 18, 2014, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

26 7. Attached as Exhibit 6 is a true and correct copy of relevant excerpts of  
27 Herbalife’s Form 10-Q for the period ending March 31, 2011, filed with the SEC on  
28 May 2, 2011, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

1           8.     Attached as Exhibit 7 is a true and correct copy of relevant excerpts of  
2 Herbalife's Form 10-Q for the period ending June 30, 2011, filed with the SEC on  
3 August 1, 2011, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

4           9.     Attached as Exhibit 8 is a true and correct copy of relevant excerpts of  
5 Herbalife's Form 10-Q for the period ending September 30, 2011, filed with the SEC  
6 on October 31, 2011, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

7           10.    Attached as Exhibit 9 is a true and correct copy of relevant excerpts of  
8 Herbalife's Form 10-Q for the period ending March 31, 2012, filed with the SEC on  
9 April 30, 2012, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

10          11.    Attached as Exhibit 10 is a true and correct copy of relevant excerpts of  
11 Herbalife's Form 10-Q for the period ending June 30, 2012, filed with the SEC on July  
12 30, 2012, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

13          12.    Attached as Exhibit 11 is a true and correct copy of relevant excerpts of  
14 Herbalife's Form 10-Q for the period ending September 30, 2012, filed with the SEC  
15 on October 29, 2012, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

16          13.    Attached as Exhibit 12 is a true and correct copy of relevant excerpts of  
17 Herbalife's Form 10-Q for the period ending March 31, 2013, filed with the SEC on  
18 April 29, 2013, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

19          14.    Attached as Exhibit 13 is a true and correct copy of relevant excerpts of  
20 Herbalife's Form 10-Q/A for the period ending March 31, 2013, filed with the SEC on  
21 December 16, 2013, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

22          15.    Attached as Exhibit 14 is a true and correct copy of relevant excerpts of  
23 Herbalife's Form 10-Q for the period ending June 30, 2013, filed with the SEC on July  
24 29, 2013, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

25          16.    Attached as Exhibit 15 is a true and correct copy of relevant excerpts of  
26 Herbalife's Form 10-Q for the period ending September 30, 2013, filed with the SEC  
27 on October 28, 2013, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

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1           17. Attached as Exhibit 16 is a true and correct copy of relevant excerpts of  
2 Herbalife's Form 10-Q for the period ending March 31, 2014, filed with the SEC on  
3 April 28, 2014, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

4           18. Attached as Exhibit 17 is a true and correct copy of relevant excerpts of  
5 Herbalife's Form 10-Q for the period ending June 30, 2014, filed with the SEC on July  
6 28, 2014, and *available at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

7           19. Attached as Exhibit 18 is a true and correct copy of Herbalife's Form 8-K  
8 for the period ending May 1, 2012, filed with the SEC on May 2, 2012, and *available*  
9 *at* <http://www.sec.gov> and <http://ir.herbalife.com/>.

10          20. Attached as Exhibit 19 are true and correct copies of the Forms 4 filed  
11 with the SEC concerning Johnson's sales of Herbalife stock for the six months before,  
12 and during, Plaintiffs' proposed class period. The relevant contents of these filings are  
13 summarized in Appendix C.1, prepared by Defendants' counsel.

14          21. Attached as Exhibit 20 are true and correct copies of the Forms 4 filed  
15 with the SEC concerning Walsh's sales of Herbalife stock for the six months before,  
16 and during, Plaintiffs' proposed class period. Also included is a Form 4 demonstrating  
17 a purchase of stock shortly after the proposed class period. The relevant contents of  
18 these filings are summarized in Appendix C.2, prepared by Defendants' counsel.

19          22. Attached as Exhibit 21 are true and correct copies of the Forms 4 filed  
20 with the SEC concerning DeSimone's sales of Herbalife stock for the six months  
21 before, and during, Plaintiffs' proposed class period. Also included is a Form 4  
22 demonstrating a purchase of stock shortly after the proposed class period. The relevant  
23 contents of these filings are summarized in Appendix C.3, prepared by Defendants'  
24 counsel.

25          23. Attached as Exhibit 22 is a true and correct copy of Herbalife's Press  
26 Release, entitled "Herbalife Announces Results of Study on Distributors and End  
27 Users in the U.S.," dated June 11, 2013, and *available at*  
28 <http://ir.herbalife.com/releasedetail.cfm?ReleaseID=770738>.

1           24. Attached as Exhibit 23 is a true and correct copy of Herbalife's Press  
2 Release, entitled "Herbalife Ltd. Announces Second Quarter 2014 Results and Raises  
3 2014 Earnings Guidance," dated July 28, 2014, and *available at*  
4 <http://ir.herbalife.com/releasedetail.cfm?ReleaseID=862450>.

5           25. Attached as Exhibit 24 is a true and correct copy of relevant excerpts of a  
6 PowerPoint presentation, entitled "Herbalife Investor Day Presentation," and dated  
7 January 10, 2013.

8           26. Attached as Exhibit 25 is a true and correct copy of relevant excerpts of a  
9 transcript of Herbalife's May 1, 2012 earnings conference call, *available at*  
10 <http://ir.herbalife.com/>.

11           27. Attached as Exhibit 26 is a true and correct copy of an article published  
12 by *The New York Times* on October 25, 2014, and entitled "Bill Ackman and His  
13 Hedge Fund, Betting Big."

14           28. Attached as Exhibit 27 is a true and correct copy of an article published  
15 by *The New York Times* on December 20, 2012, and entitled "Ackman Outlines Bet  
16 Against Herbalife."

17           29. Attached as Exhibit 28 is a true and correct copy of an article published  
18 by *The New York Times* on January 10, 2013, and entitled "What's at the Center of the  
19 Debate Over Herbalife."

20           30. Attached as Exhibit 29 is a true and correct copy of an article published  
21 by *The New York Times* on January 9, 2013, and entitled "S.E.C. Opens Investigation  
22 Into Herbalife."

23           31. Attached as Exhibit 30 is a true and correct copy of an article published  
24 by the *New York Post* on July 17, 2013, and entitled "FTC Herbalife meeting spicy."

25           32. Attached as Exhibit 31 is a true and correct copy of an article published  
26 by *The New York Times* on March 5, 2013, and entitled "In Herbalife 'Short War,'  
27 Hedge Funds Miss the Target."  
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1           33. Attached as Exhibit 32 is a true and correct copy of an article published  
2 by *The New York Times* on May 1, 2012, and entitled “Einhorn Questions Prompt  
3 Selloff at Herbalife.” The relevant portions of this article are excerpted in Appendix  
4 B, prepared by Defendants’ counsel.

5           34. Attached as Exhibit 33 is a true and correct copy of an article published  
6 by *Reuters* on May 1, 2012, and entitled “Herbalife shares swoon on Einhorn queries.”  
7 The relevant portions of this article are excerpted in Appendix B, prepared by  
8 Defendants’ counsel.

9           35. Attached as Exhibit 34 is a true and correct copy of an article published  
10 by *Business Insider* on December 19, 2012, and entitled “Bill Ackman Is Short  
11 Herbalife And The Stock Is Diving.” The relevant portions of this article are excerpted  
12 in Appendix B, prepared by Defendants’ counsel.

13           36. Attached as Exhibit 35 is a true and correct copy of an article published  
14 by *Reuters* on December 20, 2012, and entitled “Pershing Square’s Ackman shorts  
15 Herbalife; stock skids.” The relevant portions of this article are excerpted in Appendix  
16 B, prepared by Defendants’ counsel.

17           37. Attached as Exhibit 36 is a true and correct copy of an article published  
18 by *TheStreet* on December 21, 2012, and entitled “Herbalife Defenders Get Personal  
19 With Ackman, Shorts.” The relevant portions of this article are excerpted in Appendix  
20 B, prepared by Defendants’ counsel.

21           38. Attached as Exhibit 37 is a true and correct copy of an article published  
22 by *The New York Times* on January 23, 2014, and entitled “Senator Is Lobbying for  
23 Inquiry on Herbalife.” The relevant portions of this article are excerpted in Appendix  
24 B, prepared by Defendants’ counsel.

25           39. Attached as Exhibit 38 is a true and correct copy of an article published  
26 by *Bloomberg* on January 23, 2014, and entitled “Herbalife Falls as Senator Calls for  
27 Probe of Business Practices.” The relevant portions of this article are excerpted in  
28 Appendix B, prepared by Defendants’ counsel.



1           40. Attached as Exhibit 39 is a true and correct copy of an article published  
2 by *Fox Business* on January 23, 2014, and entitled “Herbalife Sells Off as U.S. Senator  
3 Calls for Pyramid Scheme Probe.” The relevant portions of this article are excerpted  
4 in Appendix B, prepared by Defendants’ counsel.

5           41. Attached as Exhibit 40 is a true and correct copy of an article published  
6 by *Business Insider* on January 23, 2014, and entitled “Herbalife is Tanking.” The  
7 relevant portions of this article are excerpted in Appendix B, prepared by Defendants’  
8 counsel.

9           42. Attached as Exhibit 41 is a true and correct copy of an article published  
10 by *The Boston Globe* on March 15, 2014, and entitled “Markey may have exaggerated  
11 claims about Herbalife.” The relevant portions of this article are excerpted in  
12 Appendix B, prepared by Defendants’ counsel.

13           43. Attached as Exhibit 42 is a true and correct copy of an article published  
14 by *The New York Times* on March 12, 2014, and entitled “F.T.C. Inquiry Into Herbalife  
15 Prompts Big Share Selloff.” The relevant portions of this article are excerpted in  
16 Appendix B, prepared by Defendants’ counsel.

17           44. Attached as Exhibit 43 is a true and correct copy of an article published  
18 by *The Wall Street Journal* on March 12, 2014, and entitled “Federal Trade  
19 Commission Starts Herbalife Probe.” The relevant portions of this article are  
20 excerpted in Appendix B, prepared by Defendants’ counsel.

21           45. Attached as Exhibit 44 is a true and correct copy of an article published  
22 by *MarketWatch* on July 28, 2014, and entitled “Herbalife slumps in after hours as  
23 earnings fall short.” The relevant portions of this article are excerpted in Appendix B,  
24 prepared by Defendants’ counsel.

25           46. Attached as Exhibit 45 is a true and correct copy of an article published  
26 by the *Los Angeles Times* on July 28, 2014, and entitled “Herbalife profits are below  
27 expectations; shares fall after-hours.” The relevant portions of this article are  
28 excerpted in Appendix B, prepared by Defendants’ counsel.

1           47. Attached as Exhibit 46 is a true and correct copy of an article published  
2 by the *Los Angeles Business Journal* on July 19, 2010, and entitled “Herbalife leads  
3 lean, mean pack of profitability.” The relevant portions of this article are excerpted in  
4 Appendix B, prepared by Defendants’ counsel.

5           48. Attached as Exhibit 47 is a true and correct copy of an article published  
6 by the *Miami Herald* on October 19, 2009, and entitled “Do homework before starting  
7 home business.” The relevant portions of this article are excerpted in Appendix B,  
8 prepared by Defendants’ counsel.

9           49. Attached as Exhibit 48 is a true and correct copy of a Final Judgment  
10 stipulated and consented to by the State of California and Herbalife, and filed on  
11 October 15, 1986.

12           50. Appendix A to the Motion to Dismiss is a chart prepared by Defendants’  
13 counsel that contains true and correct relevant excerpts of certain of the Company’s  
14 Form 10-Ks and 10-Qs as filed with the SEC.

15           51. Appendix B to the Motion to Dismiss is a chart prepared by Defendants’  
16 counsel containing true and correct relevant excerpts of public news articles.

17           52. As mentioned above, Appendices C.1, C.2, and C.3 to the Motion to  
18 Dismiss are charts prepared by Defendants’ counsel summarizing the contents of the  
19 Forms 4 attached hereto.

20           53. Appendix D to the Motion to Dismiss is a chart prepared by Defendants’  
21 counsel reflecting true and correct prices of Herbalife stock at the close from August  
22 23, 2010 through October 27, 2014, as indicated by Yahoo Finance and adjusted to  
23 normalize the prices in light of Herbalife’s 2:1 stock split approved in April 2011 and  
24 implemented on May 17, 2011.



1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct of my own knowledge.

3 Executed this 3rd day of November 2014, at Los Angeles, California.  
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6 By:   
7 DANIEL S. FLOYD  
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